

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4953 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

J. P SHARMA

Versus

CHAIRMAN CUM MANAGING DIRECTOR

Appearance:

MS SONAL D VYAS for Petitioner
SERVED BY RPAD - (R) for Respondent No. 1
MR RAJNI H MEHTA for Respondent No. 2
RULE SERVED for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/12/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

2. The petitioner before this Court is the employee
of the Oil & Natural Gas Corporation Limited, the

respondent herein [hereafter referred to as, 'the Corporation']. The petitioner has, pending this petition, retired from service in the month of February, 1996 on reaching the age of superannuation. The petitioner in this petition claims that on 11th February, 1976 he ought to have been appointed as an Assistant Engineer and the consequential reliefs. The facts leading to the present petition are :

3. On 23rd December, 1964, the petitioner was appointed in the then Oil & Natural Gas Commission [now the Corporation] as Production Operator. The petitioner resigned from service on 31st May, 1967. After resignation, he secured another employment with some private Tube-Well Company. In the year 1976, he sought re-employment/reappointment with the Corporation. The said application was accepted. Under the order dated 1st April, 1976, the petitioner was appointed as a Production Operator with effect from 11th February, 1976. In course of his service, the petitioner was further promoted as Technical Assistant [Production] Grade-II with effect from 1st January, 1982. Under Order dated 13th January, 1988, the petitioner was further promoted as an Assistant Engineer [Production] with effect from 1st January, 1986 and he earned one more promotion on 1st January, 1993. The petitioner now claims that his appointment as a Production Operator on 11th February, 1976 was erroneous and in fact he ought to have been appointed as Assistant Engineer [Production]. Therefore, the petition.

ONGC Appointment & Service Regulation, 1975 permits the Corporation to reappoint its employees who had earlier resigned from service. In many a cases, the concerned employee having resigned from service is reappointed in accordance with the said regulations. However, certain employees namely; one Mr. R.I Bahoria, Shri V.G Unnithan and Mr. M.Q Sidiquee, after their resignation were reappointed on a higher post. The principles enshrined in Articles 14 & 16 of the Constitution requires that a similar treatment be given to the present petitioner also and the petitioner shall be deemed to have been reappointed/re-employed on 11th February, 1976 as an Assistant Engineer [Production] and shall be given all the consequential reliefs. It is also contended that in any view of the matter, the petitioner's immediate junior [before resignation] one Shri Sukhram Singh was promoted as Assistant Engineer [Production] on 30th November, 1976 and the petitioner ought to be deemed to have been promoted on the said date.

The petition is contested by the Corporation. It is categorically averred that the petitioner having resigned from service on 31st May, 1967 was offered fresh appointment on 10th February, 1976 i.e., after more than 8 years' severance. Besides, in paragraph 9 of the counter affidavit, it is stated that the cases of the above referred Messrs. Bahoria, Unnithan and Siddiquee were necessarily distinct from the petitioner's and are not comparable. It is contended that Shri Unnithan had joined the Corporation on 28th October, 1961 and had served the Corporation till 1st July, 1982. During his service of 21 years, said Shri Unnithan had earned as many as 3 promotions, however, having resigned on 1st July, 1982, he was re-employed on 5th October, 1983 i.e., within little more than 1 year. Had he continued in service even after 1st July, 1982, his case for promotion as an Assistant Engineer as on 1st April, 1982 would have been considered and if found fit he would have been offered promotion as Assistant Engineer [Production] with effect from 1st April, 1982. Keeping this in view, finding him fit for promotion as on 1st April, 1982, the reemployment of said Shri Unnithan with effect from 1st October, 1983 was directed to be on the post of Assistant Engineer. It is contended that Shri Bahoria also, before his resignation, had served the Corporation for nearly 20 years and had earned two promotions. After his resignation on 1st July, 1982, he was reappointed within five months i.e., on 2nd November, 1982. Said Shri Bahoria having served more than 18 years under the stagnation relief scheme, he was entitled to be promoted as an Assistant Driller [D] and accordingly his reappointment was ordered to be made on the post of Assistant Driller [D]. Similarly, in the case of Mr. Siddiquee, before he resigned from service in the month of October, 1978, he had served the Commission for more than 22 years and after his resignation, he had gained rich experience by serving in several foreign companies. Considering his long service with the Corporation and the rich experience gained by him, his reappointment was ordered to be made on the post of Asstt. Engineer [Production]. The immediate junior of the petitioner one Shri Sukhram Singh had joined the Corporation in the year 1967 i.e., soon after the petitioner joined the Corporation. Said Shri Sukhram Singh served the Corporation continuously without break. Said Shri Sukhram Singh earned his promotion as Assistant Engineer [Production] on 30th November, 1976 in normal course of his service and earned further promotion as Assistant Executive Engineer [Production] and Executive Engineer [Production] and also as Deputy Superintending Engineer [Production].

Regulation 26 of the Oil & Natural Gas Commission [Recruitment, Appointment & Service] Regulation, 1975 empowers the Corporation to reappoint/re-employ the person who has resigned from service or whose services have been terminated under sub-regulation 1 of regulation 24. Said re-appointment/reemployment is further governed by the instructions, guidelines and clarifications issued in that behalf. The said instructions require, inter alia, that such person, prior to his leaving the service of the Commission, should have put in minimum three years' service and the period of severation of the employment with the Corporation shall not exceed the period of his employment before resignation. The said instructions also provide that while considering the employee's re-employment in the Corporation, his service record and the qualification/experience and skills acquired during the period of severance shall be taken into consideration. Indisputably, the petitioner had not put in three years' service when he resigned on 31st May, 1967. That his appointment on 11th February, 1976 was long after the date of his resignation i.e., more than 8 years. The petitioner, therefore, could not have been reappointed/re-employed under the above referred Regulation 26, relied upon by Ms. Vyas. The order dated 1st April, 1976 [Anneuxre-B to the petition] also refers to the appointment of the petitioner and others as Production Operator with effect from the date mentioned against the concerned person. Thus, even the said order does not indicate that the petitioner was re-appointed/re-employed after his resignation, as alleged. It must, therefore, be believed that the petitioner was offered fresh appointment as Production Operator with effect from 11th February, 1976.

The petitioner having been appointed on 11th February, 1976 and having earned promotions with effect from 1st January, 1982, 1st January, 1986 and 1st January, 1993, has raised dispute in respect of his appointment nearly 20 years after his appointment and when he was about to reach the age of superannuation. This delay of 20 years has not been explained by the petitioner. In view of the facts in respect of above referred Shri Bahoria, Shri Unnithan, Shri Sidiqee and Shri Sukhram Singh, the petitioner cannot claim the benefit of reappointment as Assistant Engineer on 11th February, 1976 on the principles of equality enshrined in Articles 14 & 16 of the Constitution of India. Ex-facie, the petitioner's case is not comparable with those cases. Besides, the petitioner's claim requires to be rejected on the grounds of delay and laches also. Mrs. Vyas has

contended that the cause of action arose when the benefit of reemployment on the higher post was conferred upon the above-referred Messrs. Siddique, Unnithan and Bahoria. The petition, therefore, cannot be said to be a belated one. This explanation also is not acceptable. As evident from the records, the benefit of reappointment on a higher post was conferred upon Shri Bahoria, under Order dated 29th June, 1989 and such order in respect of Mr. Unnithan was made on 3rd June, 1988. The petitioner has approached this Court six years after the date of those orders. Even delay of these six years is not explained except saying that the petitioner had been making representations to the Corporation. In my view, the delay cannot be said to be satisfactorily explained so as to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Relying upon sub-regulation 5 of Regulation 26, Mrs. Vyas has submitted that the petitioner was entitled to be considered for promotion as Assistant Engineer [Production] from the date his erstwhile immediate junior one Shri Sukhram Singh was so promoted. Mr. Sukhram Singh was promoted as an Assistant Engineer on 30th November, 1976 and in any view of the matter, the petitioner ought to have been promoted on 30th November, 1976. Sub-regulation 5 provides, *inter alia*, that the person concerned shall be treated as a fresh entrant in the post and would be junior to all those who are in the cadre in the Commission on the date of his reemployment. He would, however, be considered for promotion to the next higher post as and when his erstwhile immediate junior, prior to his resignation, is considered for promotion, if he fulfills the requisite qualification and experience; subject to a further condition that the benefit of higher post has not been given to him at the time of reemployment.

Learned advocate Mr. Mehta has contended that the petitioner was an Under Graduate and the relevant recruitment and promotion regulation, 1974 provides that promotion to the post of Production Operator, post of Technical Assistant Grade-II [Production] could be made on completion of six years' service. Further promotion to the post of Technical Assistant Grade-I also requires a minimum experience of six years and a further promotion to the post of Assistant Engineer [Production] requires a minimum experience of five years. It is apparent that on 30th November, 1976, the petitioner had not acquired sufficient experience for promotion to the next higher post i.e., Technical Assistant Grade-II [Production]. The question of his reappointment or promotion to the

post of Asstt. Engineer would, therefore, not arise. Besides, as I have held, the petitioner was offered a fresh appointment in the year 1976. Since the petitioner was not given reappointment under the powers conferred under Regulation 26, the question of invoking sub-regulation 5 thereof does not arise.

In my view, the claim made by the petitioner is frivolous and the petition is misconceived. Petition is dismissed with costs. The Advocate's fees for the purpose of costs is quantified at Rs. 2,500/=. Rule is discharged.

Prakash*